

1 AARON D. FORD
Attorney General
2 CARRIE L. PARKER (Bar No. 10952)
Deputy Attorney General
3 KEVIN A. PICK (Bar No. 11683)
Senior Deputy Attorney General
4 State of Nevada
Office of the Attorney General
5 5420 Kietzke Lane, Suite 202
Reno, NV 89511
6 (775) 687-2110
(775) 688-1822 (fax)
7 Email: cparker@ag.nv.gov
Attorneys for Defendant State of Nevada,
8 *ex rel. its Department of Transportation*

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_____ ENTERED _____ SERVED ON
COUNSEL/PARTIES OF RECORD
JAN 22 2020
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 JENNIFER KUKLOCK,

12 Plaintiff,

13 vs.

14 STATE OF NEVADA, *ex rel. its*
15 DEPARTMENT OF TRANSPORTATION,

16 Defendant.
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Case No. 3:19-cv-00369-LRH-CLB

STIPULATED PROTECTIVE ORDER

20 Plaintiff, JENNIFER KUKLOCK, by and through her counsel of record, Benson Law,
21 LLC, and Kevin Benson, Esq.; and Defendant, NEVADA DEPARTMENT OF
22 TRANSPORTATION (NDOT), by and through its attorneys, AARON D. FORD, Attorney
23 General for the State of Nevada; CARRIE L. PARKER, Deputy Attorney General; and KEVIN
24 A. PICK, Senior Deputy Attorney General, hereby stipulate to the following terms of this
25 Stipulated Protective Order to protect the confidentiality of confidential information obtained by
26 the parties in connection with this case:

27 1. **Confidential Information.** Any party or non-party may designate as
28 "CONFIDENTIAL" (by stamping the relevant page or otherwise set forth herein) any document

1 or response to discovery which that party or non-party considers in good faith to contain
2 information including, but not limited to, trade secrets, proprietary data, marketing information,
3 financial information, personnel information, and/or similar commercially sensitive information
4 of the type contemplated by Rule 26(c) of the Federal Rules of Civil Procedure or Nevada law
5 (“Confidential Information”). Where a document or response consists of more than one page,
6 the first page and each page on which confidential information appears shall be so designated.

7 **2. Designating Material as Confidential.** A party or non-party may designate
8 information disclosed during a deposition or in response to written discovery as
9 “CONFIDENTIAL” by so indicating in said response. Or a party or non-party may designate in
10 writing, within thirty (30) days after receipt of said responses or of the deposition transcript for
11 which the designation is proposed, that specific pages of the transcript and/or specific responses
12 be treated as confidential information. Any other party may object to such proposal, in writing
13 or on the record. Upon such objection, the parties shall follow the procedures described in
14 paragraph 8 below. After any designation made according to the procedure set forth in this
15 paragraph, the designated documents or information shall be treated according to the designation
16 until the matter is resolved according to the procedures described in paragraph 10 below, and
17 counsel for all parties shall be responsible for making all previously unmarked copies of the
18 designated material in their possession or control with the specific designation.

19 **3. Use of Confidential Information.** All information produced or exchanged in
20 the course of this case (other than information that is publicly available) shall be used by the
21 party or parties to whom the information is produced solely for the purpose of this case.

22 **4. Disclosure of Confidential Information.** Except with the prior written consent
23 of other parties, or upon the prior order of this Court obtained upon notice to opposing counsel,
24 Confidential Information shall not be disclosed to any person other than:

- 25 a. counsel for the respective parties to this litigation and co-counsel retained for this
26 litigation, including partners and associates who assist them in this matter,
27 Bureau Chiefs, Chief Deputy Attorneys General, Senior Deputy Attorneys

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1 General, Deputy Attorneys General, paralegals, clerical and secretarial staff
2 employed by such counsel;

3 b. individual parties, class representatives, any officer or employee of a party, to the
4 extent deemed necessary by counsel for the prosecution or defense of this
5 litigation;

6 c. non-party consultants or expert witnesses retained for the prosecution or defense
7 of this litigation, provided that each such person shall execute a copy of the
8 Certification annexed to this Order as Exhibit "A" (which shall be retained by
9 counsel to the party so disclosing the confidential information and made
10 available for inspection by opposing counsel during the pendency or after the
11 termination of the action only upon good cause shown and upon order of the
12 Court) before being shown or given any confidential information;

13 d. any authors or recipients of the confidential information;

14 e. the Court, Court personnel, court reporters, and videographers;

15 f. witnesses (other than persons described in paragraph 4(d)). A witness shall sign
16 the Certification before being shown a confidential document. Confidential
17 Information may be disclosed to a witness who will not sign the Certification
18 only in a deposition at which the party who designated the Confidential
19 Information is represented or has been given notice that Confidential Information
20 shall be designated "Confidential" pursuant to paragraph 2 above. Witnesses
21 shown Confidential Information shall not be allowed to retain copies.

22 g. Members of the jury in this case;

23 h. Professional vendors that provide litigation support services, employees of
24 independent copy services, printers or illustrators, for the sole purpose of making
25 copies of documents and exhibits to be used in this litigation;

26 i. Such other persons as Plaintiff and Defendant may agree upon in writing; and

27 j. Such other persons as the Court may order upon application of Plaintiff or
28 Defendant.

1 5. **Notice of Stipulated Protective Order.** Any persons receiving or being shown
2 Confidential Information shall be advised that the Confidential Information is being disclosed
3 pursuant to an Order of the Court and that they shall not reveal or discuss such information to or
4 with any person who is not entitled to receive such information, except as set forth herein.

5 6. **Filing of Confidential Information.** Unless otherwise permitted by statute, rule
6 or prior court order, papers filed with the Court under seal shall be accompanied by a
7 contemporaneous motion for leave to file those documents under seal, and shall be filed
8 consistent with Local Rule IA 10-5 and the Court's electronic filing procedures.
9 Notwithstanding any agreement among the parties, the party seeking to file a paper under seal
10 bears the burden of overcoming the presumption in favor of public access to papers filed in
11 court. *See Kamakana v. City and County of Honolulu*, 447 F.2d 1172 (9th Cir. 2006); *Pintos v.*
12 *Pac. Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2010); *see also Center for Auto Safety v.*
13 *Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

14 Further, pursuant to Local Rule IA 10-5(d), documents filed under seal in this case must
15 be served in accordance with Local Rule IC 4-1(c).

16 7. **Confidential Information Produced by Non-Parties.** A party may designate as
17 "Confidential" documents or discovery materials produced by a non-party by providing written
18 notice to all parties of the relevant document numbers or other identification within thirty (30)
19 days after receiving such documents or discovery materials. Any party or non-party may
20 voluntarily disclose to others without restriction any information designated by that party or
21 non-party as confidential, although a document may lose its confidential status if it is made
22 public.

23 8. **Challenges to Confidential Designation.** If a party contends that any material
24 is not entitled to confidential treatment, such party may at any time give written notice to the
25 party or non-party who designated the material. The party or non-party who designated the
26 material shall have thirty (30) days from the receipt of such written notice to apply to the Court
27 for an order designating the material as confidential. The party or non-party seeking the order
28 has the burden of establishing that the document is entitled to protection.

1 9. **Information Not Confidential.** Notwithstanding any challenge to the
2 designation of material as confidential information, all documents shall be treated as such and
3 shall be subject to the provisions hereof unless and until one of the following occurs:

- 4 a. the party or non-party who claims that the material is Confidential
5 Information withdraws such designation in writing; or
6 b. the party or non-party who claims that the material is Confidential
7 Information fails to apply to the Court for an order designating the
8 material confidential within the time period specified above after receipt
9 of a written challenge to such designation; or
10 c. the Court rules the material is not confidential.

11 10. **Order Survives Termination.** All provisions of this Order restricting the
12 communication or use of confidential information shall continue to be binding after the
13 conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation,
14 a party in the possession of confidential information, other than that which is contained in
15 pleadings, correspondence, and deposition transcripts, shall either (a) return such documents no
16 later than thirty (30) days after conclusion of this action to counsel for the party or non-party
17 who provided such information, or (b) destroy such documents within the time period upon
18 consent of the party who provided the information and certify in writing within thirty (30) days
19 that the documents have been destroyed. The Court shall retain jurisdiction to resolve any
20 dispute concerning the use of information disclosed after the termination of this action.

21 11. **Evidence at Trial.** The terms of this Order do not preclude, limit, restrict, or
22 otherwise apply to the use of documents at trial.

23 12. **No Waiver Regarding Confidential Information/Inadvertent Failure to**
24 **Designate.** Nothing herein shall be deemed to waive any applicable privilege under federal or
25 state law, or work product protection, or to affect the ability of a party to seek relief for an
26 inadvertent disclosure of material protected by privilege or work protection.

27 Inadvertent production of documents subject to work-product doctrine, attorney-client
28 privilege, or other legal privilege protecting information from discovery shall not constitute a

1 waiver of the immunity or privilege, provided that the producing party shall, upon discovery of
2 such inadvertent production, promptly notify the receiving party, in writing, of such inadvertent
3 production. In the event of such an inadvertent production, if the receiving party disputes the
4 privileged nature or required return of the material, the parties shall confer in good faith to
5 resolve the dispute. If the dispute cannot be resolved, the party seeking return of the alleged
6 privileged material shall file an appropriate motion seeking their return with the Court.

7 The inadvertent failure of a Producing Party to designate discovery materials as
8 Confidential Information shall not be deemed, by itself, to be a waiver of the party's or non-
9 party's rights to so designate such discovery materials. Immediately upon learning of any such
10 inadvertent failure, the Producing Party shall notify all receiving parties of such inadvertent
11 failure and take such other steps as necessary to correct such failure after becoming aware of it.
12 However, disclosure by a Receiving Party of such discovery materials to any other person prior
13 to the designation of discovery materials in accordance with this paragraph shall not violate the
14 terms of this Stipulation and Order.

15 13. **Application to Non-Parties.** Any witness or other person, firm or entity from
16 which discovery is sought may be informed of and may obtain the protection of this Order by
17 written advice to the parties' respective counsel or by oral advice at the time of any deposition
18 or similar proceeding.

19 14. **Limits to Disclosure of Confidential Information.** All reasonable efforts shall
20 be made by counsel of record to limit disclosure of confidential information to the minimum
21 number of persons necessary to conduct this action.

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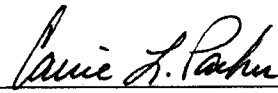
1 15. **Securing Confidential Information.** Persons receiving Confidential
2 Information shall maintain all confidential material in a secure location.

3 DATED this 16th of January, 2020. DATED this 17 of January, 2020.

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5 BENSON LAW, LLC

AARON D. FORD
Attorney General

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7 By: 
8 Kevin Benson, Esq.
9 Nevada Bar No. 9970
10 123 W. Nye Lane, Suite 487
11 Carson City, NV 89706
12 (775) 884-0838
13 Attorneys for Plaintiff Jennifer Kuklock

By: 
Carrie L. Parker
Deputy Attorney General
Nevada Bar No. 10952
Kevin A. Pick
Senior Deputy Attorney General
Nevada Bar No. 11683
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
(775) 687-2110
Attorneys for Defendant State of Nevada,
ex rel. its Department of Transportation

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17 IT IS SO ORDERED

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19 DATED this 22nd day of January 2020

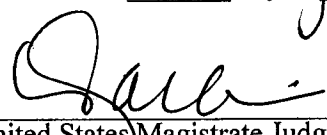
20 
21 United States Magistrate Judge
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EXHIBIT A

**CERTIFICATION OF
AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, _____, hereby declare that I have received a copy of, read, and understand the Stipulated Protective Order entered in *Kuklock v. State of Nevada, ex rel. its Department of Transportation*, United States District Court for the District of Nevada, Case No. 19-cv-00369-LRH-CLB (Protective Order). I hereby acknowledge that I have received Confidential Information, as defined in the Protective Order, and, on pain of contempt of court, I hereby declare that I will not disclose or disseminate any part of the Confidential Information to any third party without consent of an attorney of record in this case, I will use my best efforts to maintain the confidential nature of the documents and information, and I will return or destroy the Confidential Information in accordance with the terms of the Protective Order. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, and the foregoing is true and correct.

DATED THIS _____ DAY OF _____, _____.

Signature

Printed Name